

Sonya D. Winner (Bar No. 200348)
swinner@cov.com
COVINGTON & BURLING LLP
One Front Street, 35th Floor
San Francisco, California 94111-5356
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Allen Ruby (Bar No. 47109)
allen.ruby@skadden.com
Jack P. DiCanio (Bar No. 138782)
jack.dicanio@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER, & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, CA 94301
Telephone: (650) 470-4660
Facsimile: (650) 798-6550
Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ETOPIA EVANS, *et al.*,

Plaintiffs,

v.

ARIZONA CARDINALS FOOTBALL CLUB,
LLC, *et al.*,

Defendants.

Civil Case No.:3:16-CV-01030-WHA

**OPPOSITION TO MOTION FOR
EXTENSION OF TIME TO FILE SECOND
AMENDED COMPLAINT**

Date: March 16, 2017

Time: 8:00 a.m.

Dept: Courtroom 8

Judge: Honorable William Alsup

1 In its February 3 Order Granting in Part Motion to Dismiss (Dkt. No. 168), the Court granted
 2 plaintiffs leave to file a Second Amended Complaint limited to their state law misrepresentation and
 3 concealment claims. Plaintiffs seek additional time *not* to file such an amended complaint but rather to
 4 file a complaint (a) with amendments that the Court has *not* given them leave to present (b) in support of
 5 claims that this Court has explicitly held may *not* be amended and (c) adding a new plaintiff more than
 6 four months after the deadline imposed by this Court for the addition of new parties.

7 In its February 3 Order, the Court dismissed plaintiffs' RICO claim *with prejudice*. Dkt. No. 168
 8 at 19 ("Leave to amend the RICO claim is denied as futile because plaintiffs have already had ample
 9 opportunity to investigate and plead a timely claim under RICO."). Contrary to the assertion in their
 10 motion, the Court also dismissed with prejudice plaintiffs' conspiracy claims, stating that it would
 11 *consider* allowing plaintiffs *leave* to re-plead those claims only if they later developed a basis for doing
 12 so.¹ The only claims that the Court granted leave to re-plead were the common-law misrepresentation
 13 and concealment claims of the existing plaintiffs. *Id.* That is the Second Amended Complaint due
 14 February 22, with plaintiffs instructed to present their "best case" on those claims. *Id.* at 19-20.
 15 Plaintiffs' motion cites no reason why they need more time to file that pleading. Nor would any such
 16 argument be credible in light of their representation to the Court at the hearing on January 26 that "[w]e
 17 can amend this to any degree of particularity you want at this point...." Tr. at 40.

18 The only reason plaintiffs offer for seeking more time is their desire to investigate possible
 19 claims (including possible RICO claims) that might be brought on behalf of another "retained client"
 20 who, they say, recently "decided to serve as a named Plaintiff."² They identify no facts (beyond the fact

21
 22 ¹ See *id.* (stating that if plaintiffs were to uncover evidence of a conspiracy, "then the Court will at least
 23 consider allowing plaintiff to amend their complaint to re-add a conspiracy claim"). This ruling was
 24 equally applicable to plaintiffs' RICO and common-law conspiracy claims. See *id.* at 10. Plaintiffs are
 25 thus wrong in asserting that the Court's holding on their RICO claims addressed only the statute of
 26 limitations.

27 ² Mot. at 2. Plaintiffs previously asserted that their counsel had retainer agreements in place with over
 28 1,300 former NFL players. See Dkt. No. 136 ¶ 272. Their extension motion carefully avoids stating
 whether their proposed new plaintiff was one of these individuals. Either way, there can be little doubt
 that plaintiffs and their counsel have long had a large pool of potential plaintiffs from which to identify
 the most appropriate plaintiffs for this case.

that he used to play in the NFL) suggesting that this proposed new plaintiff has any claims that could responsibly be presented.

Defendants certainly agree that plaintiffs' counsel have a duty to investigate any allegations presented in any amended pleading before it is filed. If, after investigation, plaintiffs believe that they have a basis to seek leave to amend the complaint beyond the specific limited areas permitted by the Court's February 3 Order, they should file a motion for leave to amend, together with their proposed pleading, and defendants will respond. Plaintiffs explicitly disavow in their extension motion any effort to address the standards for such a motion under Rules 15 and 16; they are conspicuously silent, for example, on why they should be excused from the October 31, 2016, deadline for adding new parties established in the Court's Case Management Order (Dkt. No. 90).³ Defendants accordingly will not attempt to address those standards here – and could not do so in any event without knowledge of plaintiffs' proposed amendments and their justifications for the delay in offering them.

In the meantime, because plaintiffs have offered no reason why an extension is needed to file the amended pleading that they *have* been given leave to file, their motion should be denied and the current schedule should remain in place.

DATED: February 15, 2017

Respectfully submitted,

COVINGTON & BURLING LLP

By: /s/ Sonya D. Winner
 Sonya D. Winner (Bar No. 200348)
 swinner@cov.com
 COVINGTON & BURLING LLP
 One Front Street
 San Francisco, CA 94111-5356
 Telephone: (415) 591-6000
 Facsimile: (415) 591-6091

³ As the Court may recall, defendants did not oppose plaintiffs' motion for leave to file their Amended Complaint (which added plaintiff Walker for the first time). *See* Dkt. No. 121. But that motion was filed on October 31, 2016, the last day authorized under the Case Management Order for such motions. Dkt. Nos. 90, 112. A stricter standard will apply to any motion seeking to add yet another new plaintiff now, months after the court's deadline. *See* Fed. R. Civ. P. 16(b)(4).

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